

# Order

Michigan Supreme Court  
Lansing, Michigan

June 21, 2017

Stephen J. Markman,  
Chief Justice

ADM File No. 2016-32

Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein  
Joan L. Larsen  
Kurtis T. Wilder,  
Justices

Amendments of  
Rules 5.801, 5.802, 7.102, 7.103,  
7.108, 7.109, 7.204, 7.205, 7.208,  
7.209, 7.210, 7.212, and 7.213 of the  
Michigan Court Rules

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On order of the Court, notice of the proposed changes and an opportunity for comment having been provided, and consideration having been given to the comments received, the following amendments of Rules 5.801, 5.802, 7.102, 7.103, 7.108, 7.109, 7.204, 7.205, 7.208, 7.209, 7.210, 7.212, and 7.213 of the Michigan Court Rules are adopted, effective immediately.

[The present language is amended as indicated below by underlining for new text and strikeover for text that has been deleted.]

## Rule 5.801 Appeals to ~~Other Courts~~ Court of Appeals

- (A) ~~Right to Appeal of Right.~~ Right to Appeal of Right. ~~An~~ A party or an interested person aggrieved by an final order of the probate court may appeal as a matter of right as provided by this rule.
- (B) ~~Orders Appealable to Court of Appeals.~~ Orders appealable of right to the Court of Appeals are defined as and limited to the following:
- (1) a final order, as defined in MCR 7.202(6)(a), affecting the rights or interests of a party to a civil action commenced in the probate court under MCR 5.101(C);
  - (2) [Unchanged.]
    - (a) appointing or removing a ~~personal representative, conservator, trustee, fiduciary~~ or trust protector as referred to defined in MCL 700.7103(n), or denying such an appointment or removal;
    - (b) [Unchanged.]
    - (c) determining the validity of a governing instrument as defined in MCL 700.1104(m);

- (d) interpreting or construing a governing instrument as defined in MCL 700.1104(m);
  - (e) approving or denying a settlement relating to a governing instrument as defined in MCL 700.1104(m);
  - (f)-(ee) [Unchanged]
  - (ff) adoption assistance determinations pursuant to MCL 400.115k;
  - (3) a final order affecting the rights and interests of an adult or a minor in a guardianship proceeding under the Estates and Protected Individuals Code;
  - (4) a final order affecting the rights or interests of a person under the Mental Health Code;
  - (5) an order entered in a probate proceeding, other than a civil action commenced in probate court, that otherwise affects with finality the rights or interests of a party or an interested person in the subject matter; or
  - (36) other appeals as ~~may be hereafter~~ provided by statute ~~law~~.
- (C) ~~Final Orders Appealable to Circuit Court. All final orders not enumerated in subrule (B) are appealable of right to the circuit court. These include, but are not limited to:~~
- (1) ~~a final order affecting the rights and interests of an adult or a minor in a guardianship proceeding;~~
  - (2) ~~a final order affecting the rights or interests of a person under the Mental Health Code, except for a final order affecting the rights and interests of a person in the estate of an individual with developmental disabilities.~~
- (B) Appeal by Leave ~~Interlocutory Orders. All orders of the probate court not listed in subrule (A) are appealable to the Court of Appeals by leave of that court. An interlocutory order, such as an order regarding discovery; ruling on evidence; appointing a guardian ad litem; or suspending a fiduciary for failure to give a new bond, to file an inventory, or to render an account, may be appealed only to the circuit court and only by leave of that court. The circuit court shall pay particular attention to an application for leave to appeal an interlocutory order if the probate court has certified that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the termination of the litigation.~~

- (E) ~~Transfer of Appeals from Court of Appeals to Circuit Court. If an appeal of right within the jurisdiction of the circuit court is filed in the Court of Appeals, the Court of Appeals may transfer the appeal to the circuit court, which shall hear the appeal as if it had been filed in the circuit court.~~
- (F) ~~Appeals to Court of Appeals on Certification by Probate Court. Instead of appealing to the circuit court, a party may appeal directly to the Court of Appeals if the probate court certifies that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an appeal directly to the Court of Appeals may materially advance the ultimate termination of the litigation. An appeal to the Court of Appeals under this subrule is by leave only under the provisions of MCR 7.205. In lieu of granting leave to appeal, the Court of Appeals may remand the appeal to the circuit court for consideration as on leave granted.~~

#### Rule 5.802 Appellate Procedure; Stays Pending Appeal

(A)-(B) [Unchanged.]

- (C) Stays Pending Appeals. An order removing or appointing a fiduciary; appointing a special personal representative or a special fiduciary; granting a new trial or rehearing; granting an allowance to the spouse or children of a decedent; granting permission to sue on a fiduciary's bond; or suspending a fiduciary and appointing a special fiduciary, is not stayed pending appeal unless ordered by the court on motion for good cause.

#### Rule 7.102 Definitions

For purposes of this subchapter:

(1)-(8) [Unchanged.]

- (9) “trial court” means the district, ~~probate~~, or municipal court from which the “appeal” is taken.

#### Rule 7.103 Appellate Jurisdiction of the Circuit Court

- (A) Appeal of Right. The circuit court has jurisdiction of an appeal of right filed by an aggrieved party from the following:
  - (1) [Unchanged.]
  - ~~(2) a final order of a probate court under MCR 5.801(C);~~
  - (3)-(4) [Renumbered (2)-(3) but otherwise unchanged.]

(B) [Unchanged.]

#### Rule 7.108 Stay of Proceedings; Bond; Review

(A)-(D) [Unchanged.]

~~(E) Probate Actions.~~

- ~~(1) The probate court has continuing jurisdiction to decide other matters pertaining to the proceeding from which an appeal was filed.~~
- ~~(2) A stay in an appeal from the probate court is governed by MCL 600.867 and MCR 5.802(C).~~

#### Rule 7.109 Record on Appeal

(A) [Unchanged.]

(B) Transcript.

- (1) *Appellant's Duties; Orders; Stipulations.*
  - (a) [Unchanged]
  - ~~(b) In an appeal from probate court, only that portion of the transcript concerning the order appealed need be filed. The appellee may file additional portions of the transcript.~~
  - (c)-(e) [Relettered (b)-(d) but otherwise unchanged]
- (2)-(3) [Unchanged.]

(C)-(I) [Unchanged.]

#### Rule 7.204 Filing Appeal of Right; Appearance

(A)-(C) [Unchanged.]

(D) Form of Claim of Appeal.

- (1)-(2) [Unchanged.]
- (3) If the case involves

- (a) a contest as to the custody of a minor child, ~~or~~
- (b) a case involving an adult or minor guardianship under the Estates and Protected Individuals Code or under the Mental Health Code or an involuntary mental health treatment case under the Mental Health Code, or
- (c) a ruling that that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid,

that ~~the~~ fact must be stated in capital letters on the claim of appeal. In an appeal specified in subrule (D)(3)(~~bc~~), the Court of Appeals shall give expedited consideration to the appeal, and, if the state or an officer or agency of the state is not a party to the appeal, the Court of Appeals shall send copies of the claim of appeal and the judgment or order appealed from to the Attorney General.

(E)-(H) [Unchanged.]

#### Rule 7.205 Application for Leave to Appeal

- (A) [Unchanged.]
- (B) Manner of Filing. To apply for leave to appeal, the appellant shall file with the clerk:
  - (1)-(4) [Unchanged.]
  - (5) ~~if the appeal is from a probate court order, 5 copies of the probate court's certification of the issue, as required by law;~~
  - (6)-(7) [Renumbered (5)-(6) but otherwise unchanged.]

(C)-(H) [Unchanged.]

#### Rule 7.208 Authority of Court or Tribunal Appealed From

- (A)-(C) [Unchanged.]
- (D) Probate Actions. The probate court retains continuing jurisdiction to decide other matters pertaining to the proceeding from which an appeal was filed.

(D)-(I) [Relettered (E)-(J) but otherwise unchanged.]

## Rule 7.209 Bond; Stay of Proceedings

### (A) Effect of Appeal; Prerequisites.

- (1) Except for an automatic stay pursuant to MCR 2.614 or MCL 600.867, or except as otherwise provided under this rule, an appeal does not stay the effect or enforceability of a judgment or order of a trial court unless the trial court or the Court of Appeals otherwise orders. An automatic stay under MCR 2.614(D) operates to stay any and all proceedings in a cause in which a party has appealed a trial court's denial of the party's claim of governmental immunity.

(2)-(3) [Unchanged.]

### (B) Responsibility for Setting Amount of Bond in Trial Court.

- (1) Civil Actions and Probate Proceedings. Unless determined by law, or as otherwise provided by this rule, the dollar amount of a stay or appeal bond in a civil action or probate proceeding must be set by the trial court in an amount adequate to protect the opposite party.

(2) [Unchanged.]

(C)-(E) [Unchanged.]

### (F) Conditions of Stay Bond.

- (1) Civil Actions and Probate Proceedings. In a bond filed for stay pending appeal in a civil action or probate proceeding, the appellant shall promise in writing:

(a)-(e) [Unchanged.]

(2) [Unchanged.]

### (G) Sureties and Filing of Bond; Service of Bond; Objections; Stay Orders. Except as otherwise specifically provided in this rule, MCR 3.604 applies. A bond must be filed with the clerk of the court that entered the order or judgment to be stayed.

- (1) Civil Actions and Probate Proceedings.

(a)-(g) [Unchanged.]

(2) [Unchanged.]

(H)-(I) [Unchanged.]

#### Rule 7.210 Record on Appeal

(A) Content of Record. Appeals to the Court of Appeals are heard on the original record.

(1) Appeal From Court. In an appeal from a lower court, the record consists of the original papers filed in that court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, and the exhibits introduced. In an appeal from probate court in an estate or trust proceeding, an adult or minor guardianship proceeding under the Estates and Protected Individuals Code, or a proceeding under the Mental Health code, only the order appealed from and those petitions, opinions, and other documents pertaining to it need be included.

(2)-(4) [Unchanged.]

(B) Transcript.

(1) Appellant's Duties; Orders; Stipulations.

(a) [Unchanged.]

(b) In an appeal from probate court in an estate or trust-proceeding, an adult or minor guardianship proceeding under the Estates and Protected Individuals Code, or a proceeding under the Mental Health code, only that portion of the transcript concerning the order appealed from need be filed. The appellee may file additional portions of the transcript.

(c)-(e) [Unchanged.]

(2)-(3) [Unchanged.]

(C)-(I) [Unchanged.]

#### Rule 7.212 Briefs

(A) Time for Filing and Service

(1) *Appellant's Brief.*

- (a) Filing. The appellant shall file 5 typewritten, xerographic, or printed copies of a brief with the Court of Appeals within
  - (i) 28 days after the claim of appeal is filed, the order granting leave is certified, the transcript is filed with the trial court, or a settled statement of facts and certifying order is filed with the trial court or tribunal, whichever is later, in a child custody case, adult or minor guardianship case under the Estates and Protected Individuals Code or under the Mental Health Code, involuntary mental health treatment cases under the Mental Health Code, or an interlocutory criminal appeal. This time may be extended only by the Court of Appeals on motion; or
  - (ii)-(iii) [Unchanged.]
- (b) [Unchanged.]

(2) *Appellee's Brief.*

- (a) Filing. The appellee shall file 5 typewritten, xerographic, or printed copies of a brief with the Court of Appeals within
  - (i) 21 days after the appellant's brief is served on the appellee, in an interlocutory criminal appeal, adult or minor guardianship case under the Estates and Protected Individuals Code or under the Mental Health Code, involuntary mental health treatment cases under the Mental Health Code, or a child custody case. This time may be extended only by the Court of Appeals on motion;
  - (ii) [Unchanged.]
- (b) [Unchanged.]

(3)-(5) [Unchanged.]



(B)-(I) [Unchanged.]

# Rule 7.213 Calendar Cases

(A)-(B) [Unchanged.]

(C) Priority on Calendar. The priority of cases on the session calendar is in accordance with the initial filing dates of the cases, except that precedence shall be given to:

(1) [Unchanged.]

(2) child custody cases, guardianship cases under the Estates and Protected Individuals Code and under the Mental Health Code, and involuntary mental health treatment cases under the Mental Health Code;

(3)-(7) [Unchanged.]

(D)-(E) [Unchanged.]

*Staff Comment:* These amendments conform to recent statutory changes that require all appeals from probate court to be heard in the Court of Appeals, instead of the bifurcated system that previously required some probate appeals to be heard in the Court of Appeals and some to be heard in the local circuit court. The amendments also establish priority status for appeals in guardianship and involuntary mental health treatment cases, similar to child custody cases.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.



cah

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 21, 2017

Clerk